

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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PCT

WRITTEN OPINION (PCT Rule 66)

		Date of mailing (day/month/year)	05.05.2004
Applicant's or agent's file reference A3232.WO197		REPLY DUE	within 3 month(s) from the above date of mailing
International application No. PCT/IB 03/03206	International filing date (day/month/year) 14.07.2003	Priority date (day/month/year) 25.07.2002	
International Patent Classification (IPC) or both national classification and IPC B65D5/06			
Applicant AZIONARIA COSTRUZIONI MACCHINE et al.			

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I Basis of the opinion
 - II Priority
 - III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV Lack of unity of invention
 - V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI Certain documents cited
 - VII Certain defects in the international application
 - VIII Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis. For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 25.11.2004

Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Bevilacqua, V Formalities officer (incl. extension of time limits) de Santiago Gomez, A Telephone No. +49 89 2399-8224	
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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-21 as originally filed

Claims, Numbers

1-10 as originally filed

Drawings, Sheets

1/6-6/6 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

5. This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims	1,2,5,7,8,9,10
Inventive step (IS)	Claims	3,4,6
Industrial applicability (IA)	Claims	

2. Citations and explanations**see separate sheet**

The examination is being carried out on the **following application documents:**

Text for the Contracting States:

AL AT BE BG CH CY CZ DE DK EE ES FI FR GB GR HU IE IT LI LT LU LV MC MK NL PL PT RO SE SI
SK TR

Description, pages:

1-21 as originally filed

Claims, No.:

1-10 as originally filed

Drawings, sheets:

1/6-6/6 as originally filed

Re Item V

**Reasoned statement under Rule 66.2(a)(ii) with regard to
novelty, inventive step or industrial applicability; citations
and explanations supporting such statement**

1. State of the art

Reference is made to the following documents:

D1: US-A-5143281

D2: DE-A-2526829

D3: US-A-4564139

2. Novelty

2.1 The document D1 is regarded as being the closest prior art to the subject-matter of independent claim 1, and discloses (the references in parentheses applying to this document): a container, in particular for preserving food products, consisting in a hollow structure obtainable by bending and sealing at least one substantially flat blank and comprising: a containing portion providing an enclosure in which to accommodate at least one preservable product, presenting at least one side wall furnished with at least one end portion adaptable by bending and sealing operations in such a way as to fashion a bottom end; whereby the bottom end is fashioned from the end portion of the side wall presents at least one area of layered structure (3) delimited by at least one seal (2) positioned to isolate the selfsame area of layered structure from the enclosure of the container, thereby ensuring that the enclosure encompasses a volume devoid of interstitial spaces and/or stagnation points.

D1 discloses also implicitly an outlet portion located at the end opposite to the bottom end, permanently associated with the side wall of the containing portion and combining to establish the enclosure at least in part.

The subject-matter of independent claim 1 is therefore not novel (Article 33(2) PCT).

Dependent claims 2 and 5 do not contain any features which, in combination with the features of claim 1, meet the requirements of the PCT in respect of novelty , see figures 1A-3E and column 1 lines 19-32 and column 3 lines 16-37.

2.2 The document D2 is regarded as being the closest prior art to the subject-matter of independent claim 7, and discloses (the references in parentheses applying to this document see figure 4): a container, in particular for preserving food products,

consisting in a hollow structure obtainable by bending and sealing at least one substantially flat blank and comprising: a containing portion providing an enclosure in which to accommodate at least one preservable product, presenting at least one side wall furnished with at least one end portion adaptable by bending and sealing operations in such a way as to fashion a bottom end; and an outlet portion (11a, 11b, 13) located at the end opposite to the bottom end, permanently associated with the side wall of the containing portion and combining to establish the enclosure at least in part, characterized in that the outlet portion presents at least one spout (13) by which the food product in the container can be caused to follow a predetermined preferential flow direction, and in that such a spout consists in a part of the outlet portion furnished with at least two crease lines (see figure 3 ref. 14) extending divergently toward a free edge of the outlet portion and capable of alternating between a non operating condition in which the container is closed with the spout retracted into the outlet portion and presenting a substantially flat configuration, and an operating condition in which the container is open with the spout projecting from the selfsame outlet portion.

Dependent claim 8 does not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty, because (see D2 figure 4) a spout presenting a substantially Vee shaped cross sectional profile when in the operating condition is known.

2.3 The document D1 is regarded as being the closest prior art to the subject-matter of independent claim 9, and discloses (the references in parentheses applying to this document): a method of manufacturing a container, in particular for preserving food products, utilizing a substantially flat blank of material presenting a plurality of crease lines (1) generated

by a scoring operation, and comprising the steps of

- causing the blank to assume a substantially tubular shape (see figures 4f-7f) establishing at least one side wall of the container in production;
- fixing the blank to retain the tubular shape;
- bending the tubular blank along at least two mutually opposed segments of a transverse crease line delimiting an end portion of the side wall so that the end portion is caused to bend along angled crease lines departing from the transverse crease line and extending convergently toward a free transverse edge of the tubular blank, in such a way as to create a bottom end of the container in production, and at least two mutually opposed stiffening elements of layered structure;
- fixing the bottom end and the stiffening elements by sealing together at least two joined faces of the free transverse edge presented by the tubular blank;
- bending the end portion further along mutually opposed segments of the transverse crease line delimiting the stiffening elements so that these same elements are flattened over the bottom end;
- securing the stiffening elements to the bottom end,

-whereby this method comprises the further step of sealing the layered structure presented by each stiffening element along the corresponding segment of the transverse crease line.

The subject-matter of independent claim 9 is therefore not novel (Article 33(2) PCT).

The features of dependent claim 10 have already been employed for the same purpose in D1.

The subject-matter of dependent claim 10 is therefore not novel (Article 33(2) PCT).

3. Inventive step

Dependent claim 3 does not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step in light of the combination of D1 with document D2 (see figures 2-4).

Dependent claims 4 and 6 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step in light of the combination of D1 with document D3 figures 1 and 6.

4. Conclusion

Independent claim 1 is not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art (document D1) being placed in the preamble (Rule 6.3(b)(i) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).

The relevant background art disclosed in the document D1 should be mentioned in the description (Rule 5.1(a)(ii) PCT).

In addition, the applicant should ensure that it is clear from the description which features of the subject-matter of claim 1 are already known in combination from the document D1 (see the PCT Guidelines, III-2.3a).